



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2017-0090; FRL-10222-02-R3]

#### Air Plan Approval; Delaware; Removal of Excess Emissions Provisions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a portion of a state implementation plan (SIP) revision submitted by the State of Delaware, through the Delaware Department of Natural Resources and Environmental Control (DNREC), on November 22, 2016. The revision was submitted in response to EPA's finding of substantial inadequacy and SIP call published on June 12, 2015, which included certain provisions in the Delaware SIP related to excess emissions during startup, shutdown, and malfunction (SSM) events. EPA is approving two specific provisions of the submitted SIP revision and finds that such SIP revision corrects some of the deficiencies in Delaware's SIP identified in the 2015 SSM SIP Action. EPA plans to act on the remainder of the SIP revision in a separate action or actions.

**DATES:** This final rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2017-0090. All documents in the docket are listed on the [www.regulations.gov](https://www.regulations.gov) website. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through [www.regulations.gov](https://www.regulations.gov), or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Mallory Moser, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, Four Penn Center, 1600 John F. Kennedy Boulevard, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2030. Ms. Moser can also be reached via electronic mail at [moser.mallory@epa.gov](mailto:moser.mallory@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, wherever “we,” “us,” or “our” is used, it means the EPA.

## **I. Background**

On October 12, 2022 (87 FR 61555), we proposed to approve two specific provisions of a SIP revision submitted by the State of Delaware, through DNREC, on November 22, 2016. In that proposal, we also proposed to determine that the portion of the SIP revision we are approving corrects some of the deficiencies with respect to Delaware’s SIP that we identified in our June 12, 2015 action entitled “State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA’s SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction” (2015 SSM SIP Action). 80 FR 33840. The reasons for our proposed approval and determination are stated in the proposal for this action and will not be restated here. 87 FR 61555 (October 12, 2022). The public comment period for our proposed approval and determination ended on November 14, 2022. One comment was received and is described below.

## **II. Summary of Delaware’s SIP Revision Related to this Action**

Delaware submitted a SIP revision on November 22, 2016, in response to the SIP call issued in the 2015 SSM SIP Action. Delaware’s 2016 SIP submission addressed all the SIP provisions identified in the SIP call, but this action is only addressing the portion of Delaware’s submittal that pertains to Title 7 of Delaware’s Administrative Code (7 DE Admin. Code) 1124, Section 1.4, and 7 DE Admin. Code 1142 Section 2.3.1.6. The provisions of 7 DE Admin. Code

1124 regulate various coating and non-coating sources of volatile organic compounds, while 7 DE Admin. Code 1142 controls emissions of oxides of nitrogen (NO<sub>x</sub>) from industrial boilers and process heaters at petroleum refineries. Both 7 DE Admin. Code 1124, Section 1.4 and 7 DE Admin. Code 1142, Section 2.3.1.6, allowed for exemptions from otherwise applicable emission limitations during periods of startup and shutdown of equipment. On July 11, 2022, EPA published a Final Rule which removed the SSM provisions contained in 7 DE Admin. Code 1108, from the Delaware SIP.<sup>1</sup> EPA is acting on these two provisions next because they are subject to a court ordered deadline of February 22, 2023, whereas the four remaining provisions have court ordered deadlines of June 22, 2023, for a proposed action, and October 20, 2023, for a final action. Delaware's 2016 SIP submission showed that these two regulatory provisions had been removed from Delaware's regulations, and therefore Delaware requested that EPA remove these provisions from the Delaware SIP.

### **III. EPA's Response to Comments Received**

EPA received one comment which can be found in the docket. The commenter expressed support for this action to the extent that it approved Delaware's revision to correct two of the SSM exemptions identified in the 2015 SSM SIP Action. However, the commenter urged EPA to take action to address the other four SSM provisions in Delaware's SIP that were identified in the 2015 SSM SIP Action. EPA acknowledges this comment supporting the removal of the two provisions at issue in this action, and notes that additional actions are planned for the other Delaware SIP provisions cited in the 2015 SSM SIP Action.

### **IV. Final Action**

EPA is approving the portion of Delaware's November 22, 2016, SIP submission addressing 7 DE Admin. Code 1124 Section 1.4, and 7 DE Admin. Code 1142 Section 2.3.1.6. EPA has also determined this SIP revision partially corrects the deficiency identified in EPA's 2015 SSM SIP Action. EPA will address the remaining deficiencies in 7 DE Admin. Code 1104

---

<sup>1</sup> 87 FR 41074.

Section 1.5, 7 DE Admin. Code 1105 Section 1.7, 7 DE Admin. Code 1109 Section 1.4, and 7 DE Admin. Code 1114 Section 1.3 in a separate action or actions.

## **V. Incorporation by Reference**

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the State of Delaware's revised 7 DE Admin Code 1124, Control of Volatile Organic Compound Emissions, and 1142, Specific Emission Control Requirements, as described in Section II of this preamble and set forth below in the amendments to part 52. EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the Clean Air Act (CAA) as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.<sup>2</sup>

## **VI. Statutory and Executive Order Reviews**

### *A. General Requirements*

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

---

<sup>2</sup> 62 FR 27968 (May 22, 1997).

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

#### *B. Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

### *C. Petitions for Judicial Review*

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action, which corrects two of the deficiencies in Delaware’s SIP identified in the 2015 SSM SIP Action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2)).

### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Volatile organic compounds.

Adam Ortiz,  
Regional Administrator,  
Region III.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart I—Delaware**

2. Amend § 52.420, the table in paragraph (c):

a. Under the heading “1124 Control of Volatile Organic Compound Emissions” by revising the entry “Section 1.0”; and

b. Under the heading “1142 Specific Emission Control Requirements” by revising the entries “Section 1.0” and “Section 2.0”.

The revisions read as follows:

**§ 52.420 Identification of plan.**

\* \* \* \*

(c) \* \* \*

**EPA-Approved Regulations and Statutes in the Delaware SIP**

State regulation (7 DNREC 1100)	Title/subject	State effective date	EPA approval date	Additional explanation
* *	* *	*	* *	
<b>1124 Control of Volatile Organic Compound Emissions</b>				
Section 1.0	General Provisions	1/11/2017	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	Removing subsection 1.4 from the Delaware SIP. Previous approval August 11, 2010.
* *	* *	*	* *	
<b>1142 Specific Emission Control Requirements</b>				
Section 1.0	Control of NOX	1/11/2017	[INSERT	Making small, non-

<b>State regulation (7 DNREC 1100)</b>	<b>Title/subject</b>	<b>State effective date</b>	<b>EPA approval date</b>	<b>Additional explanation</b>
	Emissions from Industrial Boilers		<b>DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]</b>	substantive style changes. Previous approval August 11, 2010.
Section 2.0	Control of NOX Emissions from Industrial Boilers and Process Heaters at Petroleum Refineries	1/11/2017	<b>[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]</b>	Removing subsection 2.3.1.6 from the Delaware SIP and making small, non-substantive style changes. Previous approval May 15, 2012.
* * *	* * *	* * *	* * *	

\* \* \* \* \*

[FR Doc. 2023-03099 Filed: 2/13/2023 8:45 am; Publication Date: 2/14/2023]